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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No.

PANHANDLE EASTERN PIPE LINE COMPANY, *Petitioner*

v.

HONORABLE THOMAS P. THORNTON, Judge of the United States District Court for the Eastern District of Michigan, Southern Division, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Panhandle Eastern Pipe Line Company (Panhandle), Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on May 25, 1959.

OPINIONS BELOW

The memorandum opinion of the District Court is unreported as of the present time and is printed in the

Appendix to this petition. (App. 5a)[1] The opinion of the Court of Appeals is unreported as of the present time and is printed in the Appendix to this petition. (App. 1a).

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit (App. 5a) was entered on May 25, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

(1) Whether 28 U. S. C. § 1292(b) is the exclusive method of review of orders on motions for transfer.

(2) Whether 28 U. S. C. § 1292(b) limits the availability of review by mandamus proceedings under 28 U. S. C. § 1651(a) of orders on motions for transfer.

(3) Whether the right to a fair jury trial is comprehended within the standard "interest of justice" as used in 28 U. S. C. § 1404(a) so that a district judge must consider an asserted denial of that right in ruling on a motion for transfer.

STATUTES INVOLVED

The statutes involved are 28 U.S.C. § 1292(b), 72 Stat. 1770 (Act of September 2, 1958); 28 U.S.C. § 1651(a), 63 Stat. 102 (All Writs Act); and 28 U.S.C. § 1404(a), 62 Stat. 937. They are printed in the Appendix to this petition at page 12a.

STATEMENT OF THE CASE

On February 12, 1958, Michigan Consolidated Gas Company (Consolidated), a Michigan corporation, with

[1] "App." references are to the Appendix following this petition.

its principal place of business in Detroit, Michigan, filed, as Cause No. 17-703, its complaint (R. 28)[2] in the United States District Court for the Eastern District of Michigan, Southern Division, against Panhandle, a Delaware corporation, with its principal operating offices and place of business in Kansas City, Missouri. Consolidated claimed that jurisdiction was vested in the District Court under 28 U.S.C. § 1337 and 15 U.S.C. § 717, *et seq.*, particularly § 717(u). Consolidated's complaint alleged that by reason of Panhandle's refusal over a period of more than six years to sell gas to Consolidated, which the latter alleged it had a right to purchase under a tariff imposed by the Federal Power Commission, Consolidated had sustained damages amounting to seventeen million dollars.

Motion for Change of Venue Filed by Panhandle

On March 17, 1958, Panhandle filed its Motion for Change of Venue pursuant to 28 U.S.C. § 1404(a) (R. 36) alleging that for the convenience of parties and witnesses and in the interest of justice the cause should be transferred to the United States District Court for the Western District of Missouri, Western Division. In support of its motion, Panhandle submitted affidavits executed by its officers (R. 39) together with a large supporting exhibit consisting mainly of reproductions of news articles and editorials from the principal newspapers published and circulated in the Eastern District of Michigan (Volume II, Transcript of Record).[3] On April 23, 1958, Panhandle filed its re-

[2] "R." references are to the printed transcript of the record, nine copies of which are filed with this petition.

[3] The newspaper articles contained in Volume II of the Record filed with this Court have not been printed but are reproduced in substantially the same form as presented to the District Court and Court of Appeals.

quest for jury trial of the cause. (R. 56) Consolidated filed an answer to Panhandle's Motion for Change of Venue (R. 56), and after the filing of briefs oral argument on said motion was held September 29, 1958. (R. 100) Thereafter Panhandle filed a Supplemental Memorandum on October 22, 1958. (R. 140)

The Opinion and Order of the District Court

The District Court denied Panhandle's motion by an order entered April 14, 1959 (App. 11a), in accordance with a memorandum opinion of April 6, 1959. (App. 5a)

In his opinion, the District Court concluded that the matters involved in the newspaper reports submitted as an exhibit (R. Vol. II) to Panhandle's Motion for Change of Venue are not related to the cause of action now pending before him in any way that would give the readers of such reports a predisposition on any issue there presented. (App. 9a) The District Court stated that the appearance of such articles in local newspapers over a period of years could not possibly produce a population of citizens in the affected area who are "all personally prejudiced" against Panhandle. (App. 9a) The District Court concluded that the over-all picture presented was not one that redounded to the prejudice of Panhandle. (App. 9a)

Panhandle had argued that, even though prospective jurors in a trial of this case were not Consolidated customers, nevertheless the systematic and widespread campaign of newspaper abuse carried on over many years had in fact created such an inimical predisposition in such jurors as to make a fair trial unlikely. The District Court rejected this argument on the ground that at most only those persons who were con-

cerned with prices charged by Consolidated might be prejudiced.

The District Court held that traditional standards of "locus" were applicable in considering the question of transfer and that measured by such standards the action is properly in Michigan. (App. 8a) Referring to Panhandle's showing that the convenience of the parties and witnesses required that the case be transferred, the District Court concluded that, to the extent Panhandle would be served by a transfer based upon convenience of parties and witnesses, Consolidated would be proportionately disserved. (App. 7a) In so holding, the District Court either overlooked, or disregarded, Panhandle's offer to pay the cost of transporting Consolidated witnesses to Kansas City, Missouri, in the event the case were transferred. (R. 137)

Opinion of the Court of Appeals

Following the denial by the District Court of its Motion for Change of Venue, Panhandle then filed, on April 28, 1959, in the Court of Appeals for the Sixth Circuit, its Petition for a Writ of Mandamus to the District Court directing him to vacate his order of April 14, 1959, and to enter an order transferring the cause to the Western District of Missouri, Western Division. (R. 2) Jurisdiction was founded on 28 U.S.C. § 1651(a). Panhandle alleged that the District Court was guilty of an abuse of discretion in that the decision was clearly erroneous in the following particulars: *First*, the court held as a matter of law that the interest of justice concept, as used in 28 U.S.C. § 1404(a), did not comprehend the right to a fair jury trial where the petitioner could not show that *all* of the potential jurors were infected with bias and prejudice.

(App. 9a) *Second*, the court held as a matter of law that because no clear showing had been made that the potential jurors had a preconceived opinion prejudicial to the petitioner on the precise issues of the case to be tried, petitioner was not entitled to a change of venue. (App. 9a) *Third*, the court held that a party seeking transfer cannot, by paying the expenses of the other party occasioned by the transfer, thereby obtain a transfer where the convenience of parties and witnesses is otherwise balanced. *Fourth*, the court improperly adopted the standard of "locus," a doctrine of the conflict of laws, as one of the factors to be considered in determining whether or not a motion to transfer should be granted. (App. 8a)

The Court of Appeals denied Panhandle's Petition for Writ of Mandamus by its order of May 25, 1959. (App. 5a) The accompanying opinion (App. 1a) handed down on that date contained a condensed recital of the facts and listed some of the reasons given by Panhandle as to why the case should have been transferred. No further consideration was given to the questions raised by the Petition for Mandamus. The court merely stated that petitioner's contentions had been considered in the opinion of the District Court. (App. 3a)

The court discussed at some length the nature of remedies by extraordinary writs and adopted by reference its holding in *Allstate Ins. Co. v. U.S. Dist. Ct. for E.D. of Michigan*, 264 F. 2d 38 (6th Cir. 1959), to the effect that, since petitioner had made no showing that it had sought relief under the Act of September 2, 1958, 72 Stat. 1770, 28 U.S.C. § 1292(b), no relief would be provided by issuance of a writ of mandamus.

The court, in apparent amplification of this holding, went on to discuss the standards which it now believes control its exercise of the power granted it under 28 U.S.C. § 1651(a) to issue such extraordinary writs. It concluded that in light of the enactment of Section 1292(b) and the restrictions imposed by this Court's opinion in *Ex Parte Fahey*, 332 U.S. 258 (1946), and in *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379 (1953), the present case was not a proper case in which the power should be exercised.

ARGUMENT

The decisions of the Court of Appeals and the District Court raise important questions concerning the proper administration of the federal judicial system. Their effect has been not only to becloud the proper method of review of rulings on motions to transfer under 28 U.S.C. § 1404(a), but, in the instant case, substantially to deny the petitioner the right to a fair jury trial. This case presents to this Court its first opportunity to interpret and clarify the scope of 28 U.S.C. § 1292(b), for the future guidance of parties in civil proceedings in all of the federal courts. In addition, a consideration of this cause will permit this Court to resolve the numerous conflicts presently existing among the circuit courts of appeals as to the propriety of the use of the extraordinary writ of mandamus as a method of reviewing orders issued pursuant to 28 U.S.C. § 1404(a), and, if such remedy is found to be appropriate, to clarify the standards by which the courts of appeals are to control the discretion of the district courts.

Whether Section 1292(b) is the Exclusive Method of Review of Orders on Motions for Transfer

The Court of Appeals held here that, since no showing had been made by petitioner that it had availed itself of the procedure provided by 28 U.S.C. § 1292(b), petitioner had failed to disclose any extraordinary circumstances justifying issuance of a writ of mandamus to review the order of the District Court denying transfer. The only conclusion which can be drawn from the court's holding is that it believes review of orders on motions for transfer, if available at all, can only be obtained under Section 1292(b) and not under Section 1651(a). Although the present case is certainly one of major importance involving as it does a prayer for seventeen million dollars, it does not meet the requirements for review under Section 1292(b). The conclusion of the Court of Appeals to the contrary is clearly erroneous. This decision squarely presents the problem, hitherto not ruled upon by this Court, of the relationship between the extraordinary writs authorized under Section 1651(a) and appeals under Section 1292(b).

The legislative history of Section 1292(b) indicates that Congress intended that it should be closely circumscribed, and that interlocutory appeals were not to be used in litigation in which the issues raised could be otherwise properly disposed of.[4] Causes relating to the transfer of actions where it is claimed that the transfer is not authorized by law, in so far as they involve the issues of jurisdiction or venue in the transferee court,[5] were regarded as properly appealable un-

[4] See House of Representatives Report No. 1667, 85 Cong. 2nd Sess.; Senate Report No. 2434, 85 Cong. 2nd Sess.

[5] See *Deepwater Exploration Co.* v. *Andrew Weir Ins. Co.*, 167 F. Supp. 185 (E.D. La. 1958); *Orzulak* v. *Federal Commerce & Navigation Co.*, 168 F. Supp. 15 (E.D. Pa. 1958).

der the new statute. *House Report No. 1667, 85 Cong., 2nd Sess., pp. 1 and 2.* There is no indication, however, that Congress believed that Section 1292(b) was an appropriate vehicle to review any other orders relating to the transfer of an action.

Consistent with the restrictive application of the statute intended by Congress, the courts of appeals which have construed Section 1292(b) uniformly have held that the statute is to be strictly construed and applied only to those cases falling squarely within its terms. *Milbert* v. *Bison Laboratories*, 260 F.2d 431 (3rd Cir. 1958); *In re Heddendorf*, 263 F.2d 887 (1st Cir. 1959); *Oskoian* v. *Canuel*, 264 F.2d 591 (1st Cir. 1959); *United States* v. *Woodbury*, 263 F.2d 784 (9th Cir. 1959).

The question of the availability of an appeal authorized by Section 1292(b) of an order under Section 1404(a) was raised *sua sponte* by the Court of Appeals for the Fifth Circuit in *Ex Parte Deepwater Exploration Company*, 260 F.2d 546 (5th Cir. 1958). There, petitioner filed an application for leave to file a petition for writ of mandamus to review an order of the district court granting a transfer under Section 1404(a). The Court of Appeals remanded the case to the district court for consideration of whether an interlocutory appeal under Section 1292(b) was available. In an able opinion, *Deepwater Exploration* v. *Andrew Weir Ins. Co.*, 167 F. Supp. 185 (E.D. La. 1958), the district court found that there was no controlling question of law involved within the meaning of Section 1292(b) because the balancing of conveniences required by Section 1404(a) was a matter of fact and because the transferee court clearly had jurisdiction. The lower

court further found that the appeal would not materially advance the ultimate termination of the litigation. Thereupon, the Court of Appeals granted the motion for leave to file the petition for mandamus (260 F.2d 546, (5th Cir. 1958)).

The conclusion seems inescapable that the denial of a motion to transfer where there is no question of jurisdiction or venue either in the transferee or transferor courts does not present the sort of case in which the findings required by Section 1292(b) could properly be made.

The present decision of the Court of Appeals for the Sixth Circuit departs from the *Dalquaffer Exploration Company* cases by its outright denial of the right to mandamus proceedings in circumstances in which it was quite clear that interlocutory appeal under Section 1292(b) was not available. The language of the court in *Allstate Insurance Co.* v. *U.S. District Court*, 264 F.2d 38 (6th Cir. 1959), at page 39, adopted by reference in the present opinion of the Court of Appeals for the Sixth Circuit, makes this conclusion clear.

> "We find it unnecessary to consider at this time the correctness of the ruling of the District Court. * * *"

[6] The court did not consider the requirement of Section 1292(b) that the original order contain the necessary findings and that the appellant must file a motion for leave to appeal within ten days after the entry of the order. Meeting these requirements has been held jurisdictional. *Milbert* v. *Bison Laboratories*, 260 F. 2d 431 (3rd Cir. 1958); *In re Heddendorf*, 263 F. 2d 887 (1st Cir. 1959). In the instant case no certificate was made by the District Court. The Court of Appeals for the Sixth Circuit did not remand the case for such findings or suggest such remand is appropriate under Section 1292(b).

> "Petitioner makes no showing of having sought relief under the Act of September 2, 1958, 72 Stat. 1770, Sec. 1292(b), Title 28 U. S. Code. We find no such extraordinary circumstances here existing which would justify the issuance of the writ of mandamus sought by petitioner. * * *"

The present holding established a different standard for consideration of petitions for mandamus than has been adopted by any other court of appeals. The Court of Appeals for the Fifth Circuit has held that notwithstanding that an order cannot be appealed under Section 1292(b), it is nevertheless subject to review by way of mandamus. Thus, the Fifth Circuit holds that Section 1292(b) has not eliminated mandamus for the review of orders on motions for transfer. In conflict with the Fifth Circuit the Court of Appeals here has held that Section 1292(b) has destroyed the hitherto unquestioned power of review of such orders by mandamus. Obviously, in view of the apparent conflict between circuits, the question of the impact of Section 1292(b) on the availability of mandamus as an avenue for reviewing order on motions for transfer is one which this Court should resolve now so that courts of appeals and litigants may be governed accordingly.

Whether Section 1292(b) Limits the Availability of Mandamus for Review of Motions for Transfer

It is clear from the foregoing that the Court of Appeals for the Sixth Circuit determined Panhandle's *only* avenue of review of the District Court's denial of Panhandle's motion for transfer was under the interlocutory appeal procedure of Section 1292(b). Yet this Court has *not* held that mandamus is an improper

remedy to review a motion for transfer. In fact, this Court has refused to rule that mandamus is not a proper remedy in such a case. *Norwood* v. *Kirkpatrick*, 349 U.S. 29 (1955). But, if it be argued that the Court of Appeals did not completely abdicate its power to review motions to transfer by mandamus proceedings, its opinion falls victim to a second fatal error.

The Court of Appeals held in effect that the availability of mandamus for reviewing motions for transfer and the standards for that review depend solely upon the method and procedure by which the question is presented. The Court has confused the question whether it should consider the merits of a petition for writ of mandamus with the question whether the writ should issue. In doing so it created a set of multiple standards to govern both determinations. The result is the present erroneous and unwarranted decision. Thus, if the district court had made the findings required by Section 1292(b), the Court of Appeals would, if it granted leave to appeal, consider that appeal as it would any other. It would ascertain whether the court below had erred in making conclusions of law and whether the findings of fact were supported by sufficient evidence. Had the petitioner unsuccessfully requested the district court to make findings under Section 1292(b), the Court of Appeals presumably would permit review by mandamus and apply the standards enumerated in *Lemon* v. *Druffel*, 253 F.2d 680 (6th Cir. 1958). It would ascertain whether the court below had made erroneous conclusions of law and whether its ruling was, on the whole, "clearly erroneous." *In re Josephson*, 218 F.2d 174 (1st Cir. 1954); *Ford Motor Co.* v. *Ryan*, 182 F.2d 329 (2d Cir. 1950). But, where the petitioner did not request the

findings required by Section 1292(b), even though to have requested them would have been in vain and such findings were not made, the Court of Appeals will either refuse to consider the matter altogether or will, if the case is not the amorphous "really extraordinary cause," ascertain only whether the lower court "considered" the contentions of the petitioner.

Here the Court of Appeals, calling into play the novel third standard based upon failure to seek relief under Section 1292(b), erroneously refused to issue the writ of mandamus requested by Panhandle. The effect of the application of this third standard is to attach undue weight to the phrase "clear abuse of discretion." That standard should not represent, and certainly was never intended to represent, a perfunctory procedure to give rubber-stamp approval to the actions of the lower courts. In applying the third standard, the Court of Appeals was satisfied to observe that the lower court had considered the "contentions" of Panhandle. But "consideration" alone does not discharge the discretionary duty of the district court on a motion for change of venue. The lower court must consider a motion for transfer and it must exercise proper discretion in that consideration. In the present case, the Court of Appeals construes these two elements to be one, and summarily concludes that the consideration of Panhandle's "contentions" *is* the exercise of proper discretion which insulates the action of the lower court from scrutiny by the Court of Appeals.

The erroneous decision of the Court of Appeals for the Sixth Circuit in the present case compounds the confusion already existing among the several courts of

appeals concerning the scope and method of review for transfer orders under Section 1404(a).[7] A careful examination of the conflicting decisions indicates that not only do the courts of appeals require different procedures but, in effect, that the multiplicity of procedures has produced the application of different standards of the correctness of the lower court rulings on the motions to transfer.

The number of cases cited below illustrates the fact that the correctness of rulings on motions for transfer is a matter frequently before the courts. Likewise, the contrariety of rulings on the procedures to be used and the standards to be applied indicates a clear need for definitive determinations by this Court, not only of the availibility of the remedy of mandamus vis-à-vis the appeal procedures prescribed by Section 1292(b) but of the standards, if any, to be applied in reviewing such rulings.

Petitioner submits that it has been injured by the unwarranted and unprecedented multiple standard employed in this case for the first time. Because appeal under Section 1292(b) was not available, the

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[7] Compare the procedures and standards used in the following cases involving review of transfer orders under Section 1404(a): *All States' Freight* v. *Modarelli*, 196 F. 2d 1010 (3rd Cir. 1952); *Clayton* v. *Warlick*, 232 F. 2d 699 (4th Cir. 1956); *Great Northern Railway Company* v. *Hyde*, 238 F. 2d 852 (8th Cir. 1956), 245 F. 2d 537 (8th Cir. 1957); *In re Josephson*, 218 F. 2d 174 (1st Cir. 1954); *Ex Parte Chas. Pfizer & Co.*, 225 F. 2d 720 (5th Cir. 1955); *Ex Parte Pharma Craft Corporation*, 236 F. 2d 911 (5th Cir. 1956); *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329 (2nd Cir. 1950); *Torres* v. *Walsh*, 221 F. 2d 319 (2nd Cir. 1955); *Wiren* v. *Laws*, 194 F. 2d 873 (D.C. Cir. 1951); *Chicago, R.I. & P. Co.* v. *Igoe*, 212 F. 2d 378 (7th Cir. 1954), 220 F. 2d 299 (7th Cir. 1955); *Blaski* v. *Hoffman*, 260 F. 2d 317 (7th Cir. 1958), *cert. granted sub. nom.*, *Hoffman* v. *Blaski*, 79 S. Ct. 583 (1959).

Court of Appeals should not have applied a standard which imposed a greater burden on petitioner than the court would have imposed had the petitioner done a useless act.

The Effect of the Decision Below is to Deny Panhandle the Right to a Fair Jury Trial

The instant case brings to this Court the question as to whether or not the words "in the interest of justice" used in Section 1404(a) are to be construed to comprehend the right to a fair jury trial. This question has never been considered by this Court nor any court of appeals except in this case. Lower courts which have dealt with this question have uniformly held that the phrase does operate to insure the right to a fair trial. See, e.g., *Kirk* v. *Spur Distributing Co.*, 95 F. Supp. 428 (D.C. Del. 1950); *United States* v. *Erie Basin Metal Products Co.*, 79 F. Supp. 880 (D.C. Md. 1938) (Rule 21 (b), Fed. R. Crim. P.) The effect of the Court of Appeals' approval of the opinion of the District Court is to determine that the words, "interest of justice," used in Section 1404(a) do not comprehend the right to a fair jury trial.

Panhandle's motion for transfer was bottomed on the three factors of Section 1404(a): convenience of parties, convenience of witnesses, and the interest of justice. On the question of convenience of the parties and witnesses, petitioner submits that, in view of the showing made in the affidavits filed in support of Panhandle's motion, the District Court committed clear error in concluding that these grounds did not justify the requested transfer. This is particularly true in view of Panhandle's offer to pay the expenses of Consolidated's witnesses to come to and remain in the

Western District of Missouri upon the trial of the case pending before him.

The greatest force of Panhandle's motion for transfer stems from the showing that it cannot obtain a fair jury trial of the lower court action within the Eastern District of Michigan. In support of this position, Panhandle submitted an exhibit consisting mainly of newspaper articles taken from the major newspapers published in the Detroit area and circulated throughout the Eastern District of Michigan (R., Vol. II). These articles delineate the bitter controversies in which Panhandle and Consolidated have been engaged during the past several years, and they amply demonstrate the unfailing ability of Consolidated to enlist and obtain the active and partisan support of its position in these controversies by high public officials of various state, municipal, and other governmental bodies. Even a cursory reading of such articles conclusively demonstrates the widespread hostility which has been created against Panhandle in the area. Despite this showing and the statements in the affidavits submitted in support of Panhandle's motion the District Court determined not to grant the transfer. In effect, the opinion of the District Court stated the burden of Panhandle to be a showing that *all* of the population of the affected area must be personally prejudiced, for he stated in his opinion (App. 9a):

> "* * * To say that the appearance of these articles in the local newspapers over a period of years necessarily, or even possibly, would produce a population of citizens in the affected area *who are all personally prejudiced* against defendant because of an indoctrinated belief that Panhandle's success in this litigation would mean personal doom to them, is to indulge in fantasy. This is not

> the 'interest of justice' concept that was intended to be furthered by § 1404(a). * * *" (Emphasis supplied.)

Such a showing is, of course, a manifest impossibility. No court could realistically require such a showing and give anything other than mere lip service to the interest of justice concept contained in Section 1404(a). Further, the last sentence of the above quoted material indicates that the District Court believed that the words, "interest of justice," used in Section 1404 (a) did not comprehend the right to a fair jury trial. This holding, petitioner submits, is clearly erroneous. Even assuming that the District Court believed that conceivably a showing could be made which would warrant a transfer to insure a fair jury trial, it is clear from his opinion that he believed the showing would have to be that potential jurors had a preconceived opinion prejudicial to Panhandle on the precise issues of the case to be tried. This, too, is an impossible burden for Panhandle or any other litigant to discharge.

A case should be transferred without waiting to ascertain by examination of the talesman whether there is specific or unanimous prejudice against a party when it is shown that the party may, or probably will, be drawn into a trial by a jury under an influence of which they may themselves be hardly conscious, an influence which perhaps no human sagacity can detect, an influence carefully created by many years of propaganda disseminated by the newspapers of the area. *Delaney v. United States*, 199 F.2d 107 (1st Cir. 1952); *United States v. Florio*, 13 F.R.D. 296 (S.D. N.Y. 1952); *Jacob v. Town of Oyster Bay*, 104

N.Y. Supp. 275 (1907). The federal courts should be quick to transfer a case when there is the slightest possibility that such instinct prejudice may influence the outcome. Justice requires no less.

The standard for which Panhandle contends is also the standard applied in many cases in the state courts. These cases are persuasive precedents in the federal courts on this point for the reason that in many of such cases the state courts were interpreting language in their own change of venue statutes identical with the language contained in Section 1404(a). See, e.g., *Rios v. Lacey Trucking Co.*, 123 Cal. App. 2d 865, 268 P.2d 160 (1959); *Mayor and Council of Hoboken v. Griffin*, 97 N.J.L. 16, 116 Atl. 712 (1922); *Jacob v. Town of Oyster Bay*, 104 N.Y. Supp. 275 (1907).

The language of the District Court can have no other meaning but that he does not believe "the interest of justice" concept of Section 1404(a) was intended to be applied to the showing and request of Panhandle in the present case. This is an erroneous construction of Section 1404(a) which, together with the other errors of the District Court, the Court of Appeals permitted to stand. It should be corrected by this Court. The interrelation of the right to a fair jury trial and the "interest of justice" of Section 1404(a) constitutes a new question never considered by this Court.

CONCLUSION

The instant case, growing out of a pending action for damages in the amount of seventeen million dollars, presents important questions heretofore undecided by this Court. There is involved the question of whether or not 28 U.S.C. § 1292(b) is the *exclusive* remedy by

which interlocutory orders, including rulings on motions for transfer under Section 1404(a), are to be reviewed, and, if Section 1292(b) is not the exclusive remedy, what is to be the relationship of Section 1292(b) to the availibility of the extraordinary writs authorized by Section 1651(a).

Also presented for review is the question of whether or not Section 1404(a) is to be construed so as to comprehend the right to a fair jury trial.

Petitioner urges that these questions have been erroneously decided by the Court of Appeals and that the orderly administration of the federal judicial process requires their review and final determination by this Court. For these reasons, Panhandle prays that a writ of certiorari issued to the United States Court of Appeals for the Sixth Circuit, to review its judgment in this case.

Respectfully submitted,

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